



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

December 10, 1990

Mr. Blake Hansen
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Attorneys for Pecos-Barstow-Toyah
Independent School District
P.O. Box 1311
Odessa, Texas 79760

OR90-575

Dear Mr. Hansen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10946.

The Pecos-Barstow-Toyah Independent School District [the district] received an open records request for numerous documents from the personnel file of a former district employee. You state that you have released to the requestor most of the requested documents, but you seek to withhold "documentation regarding the change of status of [the employee's] position with the District." You contend that this information comes under the protection of sections 3(a)(1), 3(a)(2), and 3(a)(14).

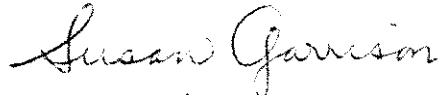
A prior determination of this office, Attorney General Opinion JM-36 (1983) (copy enclosed), resolves your request. Section 3(a)(2) is designed to protect public employees' personal privacy. The scope of section 3(a)(2) protection, however, is very narrow. See Open Records Decision No. 336 (1982). The test for section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1): to be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546, 683-85 (Tex. App. - Austin 1983, writ ref'd n.r.e.). The information at issue pertains solely to the former employee's actions as a public servant, and as such cannot be deemed to be outside the realm of

public interest. Section 3(a)(2) was not intended to protect the type of information at issue here.

Section 3(a)(14) protects from public disclosure "education records," as defined in the the Family Educational Rights and Privacy Act of 1974. See 20 U.S.C. § 1232g(a)(4)(A). Contained in the documents submitted to this office are various handwritten memoranda. Those records that were written by students, as well as other information that reveals the identities of particular students, come under the protection of section 3(a)(14). Attorney General Opinion JM-36. We have marked the portions of the requested records that you must withhold pursuant to section 3(a)(14); the remaining information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-575.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/le

Ref.: ID# 10946

Enclosures: Attorney General Opinion JM-36
Marked documents

cc: Shirley Selz
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